

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

FILED

AUG 05 2011

DONALD R. HUENE
IN PROPRIA PERSONA
7429 N. VALENTINE
FRESNO, CA 93711
(559) 431-1639

Plaintiff,

v.

U.S. DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
1111 CONSTITUTION AVENUE
WASHINGTON, DC 20224

and

ANTHONY SHELLY
INTERNAL REVENUE SERVICE
2525 CAPITOL STREET, SUITE 204
FRESNO, CA 93721-2227

Does I through X

Defendants.

CASE NO:

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY
DEPUTY CLERK

COMPLAINT FOR INJUNCTIVE,
DECLARATORY AND MONETARY RELIEF

1:11 CV 01306 AWI SKO, et al

Dated this _____

COMPLAINT FOR INJUNCTIVE DECLARATORY AND MONETARY RELIEF

1. This is an action under the Privacy Act of 1974, 5 U.S.C. § 552(a) et seq., the Freedom of Information Act, U.S.C. § 552(1) et seq., for injunctive, declaratory and monetary relief pursuant to the aforementioned. Federal Declaratory Judgement Act 28 U.S.C. § 2201 and 42 U.S.C. § 1983.

JURISDICTION

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552a(g) (1) section 552(a) (B), and U.S.C. § 1311.

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CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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EASTERN DISTRICT OF CALIFORNIA
BY
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1 3. Venue is appropriate in the Eastern District of California United
2 States District Court pursuant under U.S.C. § 552(a)(g)(5), § 552(a)(4)(B) and 28
3 U.S.C. § 1391.

4 PARTY

5 4. Plaintiff Donald R. Huene is a private individual appearing in
6 propria persona and is proceeding to request injunctive, declaratory and
7 monetary relief pursuant to the aforementioned. Plaintiff, Donald R. Huene
8 is a citizen of the United States and a long-time resident of the area of
9 jurisdiction of the United States District Court for the Eastern District of
10 California.

11 5. Defendant in the United States Department of Treasury is an
12 agency established by the executive branch in the United States Government.
13 Internal Revenue Service is an agency within the meaning of 5 U.S.C. §
14 552(f)(1)(209). The Internal Revenue Service is also an agency within the meaning of
15 5 U.S.C. § 552(f)(1)(2009).

16 6. Anthony Shelly is an agent for the aforementioned agency, Internal
17 Revenue Service.

18 FACTS

19 7. Defendant Internal Revenue Service has previously ordered the
20 Plaintiff for examinations of scheduled F filings on numerous occasions.
21 Defendants decided to renew their examination of Plaintiff and requested a
22 meeting. On December 14, 2010, Plaintiff granted permission for Richard
23 Holland and Necia Wollerman to represent Plaintiff and they were given power
24 of attorney to contact and complete the audit.

25 8. Agents, including Defendant Anthony Shelly and the agent whom he
26 supervised, Siu Chan, requested voluminous records, almost all of which were
27 in their possession. As a result, Plaintiff decided that the audit would
28 have to be managed in propria persona.

1 As a consequence, Plaintiff wrote a letter dated April 7, 2011 addressed to
2 Ms. Chan confirming previous contacts. Plaintiff notified them that he was
3 appearing for the audit and that all present and subsequent litigation in
4 propria persona. Consequently, Ms. Siu Chan and Defendant Anthony Shelly
5 were hereby instructed to contact only Plaintiff, the party in propria
6 persona. This letter was to clarify previous correspondence which may not
7 have been specifically clear and apparently was not understood by Ms. Chan.

8 9. This letter of April 7, 2011 documented the previous assumption
9 that Plaintiff had that Richard L. Holland was no longer to represent him in
10 the appearance before the Internal Revenue Service and I was to be the only
11 contact. In the fact that this letter documented that I was rescinding the
12 previous power of attorney granted to Richard L. Holland.

13 10. On or about June 6, 2011, I received an e-mail from Richard L.
14 Holland, CPA indicating Mr. Shelly took it upon himself not to contact me
15 but to just contact Mr. Holland without either copying me or notifying me of
16 his contact with Mr Holland.

17 11. In a letter dated June 7, 2011, I confirmed the fact that I
18 rescinded completely Mr. Holland's power of attorney, as I was acting as
19 myself in propria persona. I notified him that I found out he had phoned Mr.
20 Holland despite my telling him not to. I notified Mr. Shelly in a letter
21 dated June 7, 2011, that I was getting billed from Mr. Holland which should
22 be Mr. Shelly's responsibility because I gave no authorization for him to
23 contact Mr. Holland as the power of attorney had been rescinded. I further
24 informed Mr. Shelly that this was a breach and unlawful disclose of tax
25 information which was in violation of the law (IRC § 6103(a)).

26 12. It is noted that the Internal Revenue Service phoned Mr. Holland
27 instead of me despite being clearly documented that I was the only one to be
28 contacted directly.

1 13. Secondary to Mr. Shelly's unauthorized phone calls, I began
2 receiving bills from Mr. Holland for these contacts. I informed Mr. Shelly
3 that he had no authorization to contact Mr. Holland and I thought there was a
4 breach and unlawful disclosure of information which was precluded and
5 unlawful pursuant to IRC § 6103(a).

6 14. Giving Mr. Shelly the benefit of the doubt that he had not been properly
7 informed by Ms. Chan of my mandates, in a letter dated June 7, 2011, I requested him
8 that if this was, in fact, a simple error and not willful, wanton, or malicious, that
9 I would accept an apology from him within the next five (5) days if this action was
10 inadvertent and not a willful, wanton, and malicious disclosure of tax information
11 prohibited by IRC 6103(a) by disclosing information to an unauthorized person after a
12 power of attorney has been rescinded. If Defendant Shelly had acted willfully,
13 wantonly, and maliciously violating IRC 6103(a), he would not respond, and I would
14 conclude and assume that the disclosure was willful, wanton, and malicious and not
15 simply inadvertent.

16 15. Mr. Shelly never responded to my request and consequently, he confirmed
17 that his disclosure was a willful, wanton, and malicious, violation of IRC § 6103(a).
18 By Defendant Anthony Shelly's silence, he acknowledged and affirmed that his contact
19 with Mr. Holland was willful, wanton, and malicious.

20 16. On or about July 6, 2011, Mr. Shelly, despite my admonition, requests,
21 and mandates not to, again contacted Mr. Holland directly.

22 17. In a letter dated July 11, 2011, I informed Defendant Shelly that
23 he had a serious breach of the law which was both malicious and willful. I
24 noted that by his silence, he had acknowledged and consented to his actions
25 as willful, wanton, and malicious. It was noted in that letter that since
26 Defendant Shelly had not responded to my request to explain his actions, I
27 reasonably assumed that he did not wish to explain. As a consequence of his
28 contact with Mr. Holland, I was getting bills from Mr. Holland for his
illegal contacts which were not permitted by law. It was noted that these

1 contacts were costly, costing Plaintiff money and time and all these contacts
2 were unnecessary, unlawful, and resulting in no resolution of the problem
3 presented.

4 18. Mr. Shelly was further informed that he had no authorization to
5 contact the CPA. Contacts by Mr. Shelly to the certified public accountant
6 were costing the Plaintiff money and these contacts were unnecessary,
7 unlawful, and resulting in no resolution.

8 19. Despite all the prior letters and correspondence telling Mr.
9 Shelly that the power of attorney had been rescinded and he had no authority
10 to deal with my accountant directly, he nonetheless continued to contact him
11 which represented continued willful, wanton, and malicious violation of the
12 Internal Revenue code. Defendant Anthony Shelly did this knowing that Mr.
13 Holland's time was expensive, not to the Defendant Shelly, but rather to the
14 Plaintiff himself. Mr. Shelly presented himself to Mr. Holland to be a
15 government agent with authority when he called the accountant knowing that
16 the accountant, Richard Holland, knowing that he had no such authority, any
17 reasonable person would have known that this was a violation of the Fourth
18 Amendment of the United States Constitution making the action willful, wanton,
19 and malicious.

20 20. Plaintiff documents that Defendant Anthony Shelly violated Plaintiff's
21 Civil Rights under 42 United States Code Section 1983. Defendants have violated the
22 Fourth Amendment by orally searching and seizing information that they were not
23 entitled to obtain in the manner of which it was obtained.

24 21. Defendants have done this under color of law, although they had
25 no legal authority to do so as aforementioned.

26 22. Defendant Anthony Shelly was given time to explain his previous
27 actions and he chose to ignore or waive that opportunity, leading to the
28 conclusion that Mr. Shelly, in fact, do this willfully, maliciously, and

1 simply because he could.

2 23. The Plaintiff alleges that as a direct result of the unlawful
3 actions by the defendant, the Plaintiff has sustained both monetary and time
4 damages.

5 24. There has been no response at all from Defendant Shelly suggesting
6 that these breaches were inadvertent and not wanton, willful and malicious.

7 FIRST CAUSE OF ACTION (PRIVACY ACT /FREEDOM OF INFORMATION ACT - DENIAL OF

8 ACCESS TO RECORDS)

9 25. Plaintiff repeats and realleges the allegations contained in the
10 aforementioned paragraphs inclusively.

11 26. Plaintiffs have requested under the Privacy and Freedom of
12 Information Act copy of all information maintained about Plaintiff. A
13 voluntary extension was given by Plaintiff so Defendants could comply. A
14 suit was filed when the Defendants failed to reply in the time granted by
15 Plaintiff for Defendants to obtain the records.

16 SECOND CAUSE OF ACTION (PRIVACY ACT - IMPROPER DISSEMINATION)

17 27. Plaintiff repeats and realleges all the allegations contained in
18 the aforementioned paragraphs. Defendant Internal Revenue Service and
19 Defendant Shelly, in violation of § (d)(1) of the Privacy Act, Defendants failed
20 to secure written authorization to request information as noted above. Disclosures
21 were not permitted by routine exception and Defendants failed to clarify whether or
22 not there was any exception to the provisions of the Privacy Act.

23 28. As a result, the Defendants violation of the Privacy Act,
24 Plaintiff has suffered adverse and harmful effects including but not limited
25 to mental distress, emotional distress, embarrassment, humiliation, and
26 suffered monetary damages secondary to this improper disclosure.

27 THIRD CAUSE OF ACTION - VIOLATION OF CIVIL RIGHTS

28 29. Plaintiff alleges that Defendants have violated his civil rights

1 under 42 U.S. Code § 1983. Defendants have violated the fourth amendment by orally
2 searching and seizing information they were not entitled to obtain in the manner that
3 the Defendants obtained it. Defendants did this under color of law although they had
4 no legal authority to do so.

5 30. In a letter dated June 7, 2011, Plaintiff asked said Defendant
6 IRS Agent Shelly to explain why he had made the contact of June 6, 2001 after
7 the letter of April 7, 2001 revoking such authority and said Defendant chose
8 to ignore the inquiry. When Plaintiff asked to have Defendants explain their
9 actions, they chose to ignore and waive that opportunity. Instead, said
10 Defendant made a further unauthorized and unconstitutional contact with
11 Plaintiff's accountant on July 6, 2011. Defendant did this knowing that he
12 had been told specifically that he had no such authorization or consent,
13 knowing he had no legal authority to make such contacts and knowing he
14 possessed no warrant, all of said activity being willful, wanton and
15 malicious. In sum, Defendant Shelly did this by claiming authority he knew
16 he did not have. This would let any person conclude that Defendants did this
17 willfully, wantonly, and maliciously, and simply because they could.

18 31. In spite of all directives, withdrawal and rescinding of all
19 previous consent, said Defendant Shelly repeatedly contacted the accountant,
20 Richard Holland, seeking and gaining and gaining information to be used
21 against Plaintiff in the ongoing audit. All theses unauthorized and
22 warrantless contacts were searches and seizures without consent and without
23 warrant, and therefore and thereby in violation of the Plaintiff's 4th
24 Amendment rights and therefore in violation of Plaintiff's Civil Rights
25 pursuant to 42 USC 1983.

26 32. As a result of the aforementioned unlawful actions, it has cost
27 Plaintiff both time and money and Plaintiff has suffered monetary loss.
28 Secondary to the egregious, wanton, willful and malicious actions of
Defendants, Plaintiff is hereby and therefore entitled to punitive damages.

1 WHEREFORE, Plaintiff Donald R. Huene requests that the Court award him
2 the following relief:

3 1. Declare the Defendant Anthony Shelly and Defendant Internal
4 Revenue Service violated the Privacy and Freedom of Information Acts as
5 aforementioned;

6 2. Declare that Defendant Anthony Shelly and Defendant Internal
7 Revenue Service violated the civil rights of the Plaintiff;

8 3. Order the Defendants to immediately release all requested records
9 in their entirety to the Plaintiff.

10 4. Award Donald R. Huene any actual damage under 5 U.S.C. § 552(a)(g)
11 (4)(A) the exact amount of which to be determined at trial but is not less than
12 \$1000.00;

13 5. Award Plaintiff Donald R. Huene punitive damages from Defendant
14 Anthony Shelly for violation of Plaintiff's Civil Rights.

15 6. Award costs and attorney fees as provided by 5 U.S.C. §
16 552a(g)(3)(B) and § 552a(g)(4)(B), § 552(a)(4)(E), and U.S.C. § 2412 (d), and under
17 42 U.S.C. § 193.

18 7. Refer Anthony Shelly, who is responsible for violating the
19 Privacy Act for prosecution under 5 U.S.C. § 552a(i)(1);

20 8. Expedite this action in every way pursuant to 28 U.S.C. § 1657 (a) and
21 grant such other and further relief as the court may deem just and proper.

22 Respectfully submitted,

23
24 By: Donald R. Huene
25 Donald R. Huene
26 In propria persona
27 7429 N. Valentine
28 Fresno, CA 93711
(559) 431-1639